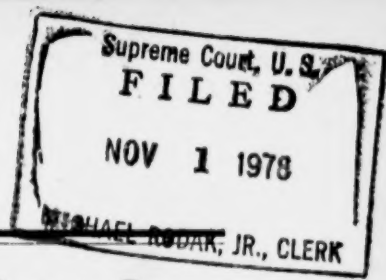


No. 78-402



In the Supreme Court of the United States

OCTOBER TERM, 1978

JOHN H. MEIER, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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**MEMORANDUM FOR THE UNITED STATES
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Petitioner challenges the district court's order and judgment forfeiting his \$100,000 cash bail.

The pertinent facts are as follows: On August 13, 1973, petitioner was indicted in the United States District Court for the District of Nevada for attempted tax evasion, in violation of 26 U.S.C. 7201, and was released on a \$100,000 cash bond (I-R. 1).¹ The conditions of the bond included, *inter alia*, that petitioner would personally appear as the court might order and that he would not travel outside the United States except within a 130-mile

¹"R." refers to the three-volume duplicated record on appeal.

radius from his home in Vancouver, British Columbia, Canada.² On January 14, 1974, a superseding indictment was filed (I-R. 2-11). The terms of release in the first indictment were ordered to apply as well to the superseding indictment (I-R. 162-163). Thereafter, on March 18, 1974, at the request and for the convenience of petitioner, he was arraigned on Counts I and II of the superseding indictment in the United States District Court for the Western District of Washington at Tacoma, Washington (I-R. 12).

On July 31, 1974, prior to the scheduled hearing on his motions filed with respect to the superseding indictment, petitioner filed a "Waiver of Defendant's Presence" pursuant to which he "agreed to be present in person in Court ready for trial any day and hour which the Court may fix in his absence" (I-R. 163). Thereafter, petitioner twice failed to appear on successive dates set for the trial of the case (Pet. App. B). On the first of these two occasions (December 2, 1974), petitioner's counsel advised the district court that petitioner was in London and was too sick to travel. The court ordered petitioner's bail forfeited and directed petitioner's counsel to arrange to have petitioner examined in London by a physician selected by the government (II-R. 5-34). The case was then continued for two days. On December 4, the court was advised that arrangements had been made for a physician from the American Embassy in London to examine petitioner, but that petitioner had not made the necessary arrangements for the examination (III-R. 5-9). The district court found that petitioner had violated the order of October 2, 1973, modifying the previously imposed travel restrictions (III-R. 12-16). After noting

²Subsequently, on October 2, 1973, the travel limitations were modified to permit petitioner to travel to London, England, for a limited period of time.

that petitioner had allegedly been ill for two months without advising the court of the illness until three days before trial, the court ordered petitioner to present himself immediately to the American Embassy in London for a medical examination (III-R. 15-17). The district court further ordered that the forfeiture of bond was to remain in effect (III-R. 18-19). Finally, the court rescheduled the trial for January 6, 1975, and petitioner was ordered to appear before the district court on January 3, 1975 (III-R. 19-20).

Petitioner never appeared at the American Embassy. Instead, on either December 5 or 6, 1974, he returned to his home in Vancouver, British Columbia (I-R. 166). On January 3, 1975, petitioner again failed to appear before the district court. At that time, petitioner's counsel was unable to give an explanation or excuse for petitioner's absence (I-R. 166). Petitioner also failed to appear for a hearing in a related case in the United States District Court for the Central District of California on January 27, 1975. See *Meier v. Keller*, 521 F. 2d 548, 552 (9th Cir. 1975), cert. denied, 424 U.S. 943 (1976). On February 6, 1975, petitioner was indicted in the United States District Court for the District of Nevada for failure to appear in accordance with the bond, in violation of 18 U.S.C. 3150 (I-R. 93).

On April 10, 1975, the government moved for entry of judgment on the previously declared bail forfeiture (I-R. 90). On September 5, 1975, after having given both parties the opportunity to file responsive pleadings, the district court entered judgment on the forfeiture (I-R. 172-173). The court of appeals dismissed petitioner's appeal, observing that petitioner twice failed to appear for trial and "has never appeared since that time" (Pet. App. B).

The court of appeals correctly dismissed petitioner's appeal. As this Court held in *Molinaro v. New Jersey*, 396 U.S. 365 (1970), an individual who seeks to invoke the processes of the law while flouting them has no entitlement "to call upon the resources of the Court for determination of his claims." (*id.* at 366). See also *United States v. Villegas-Codallos*, 543 F. 2d 1124, 1125 (9th Cir. 1976). Since petitioner remains a fugitive from justice, he likewise has no right to review by this Court.³

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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³Petitioner relies (Pet. 5) upon several decisions in which the courts considered the propriety of a bail bond forfeiture where the defendant was a fugitive. *United States v. Catino*, 562 F. 2d 1 (2d Cir. 1977); *United States v. Miller*, 539 F. 2d 445 (5th Cir. 1976); *United States v. D'Anna*, 487 F. 2d 899 (6th Cir. 1973); *United States v. Wray*, 389 F. Supp. 1186 (W.D. Mo. 1975). But those cases are distinguishable because they involved appeals by the third-party sureties on the bail bonds and not by the fugitive himself.

G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977), upon which petitioner also relies (Pet. 11), is similarly distinguishable. There, the Court held that the warrantless entry by Internal Revenue agents into the office of a corporation violated the Fourth Amendment. While the corporation was the alter ego of an individual who was a fugitive from justice, that fact simply subjected the corporation's assets to collection in satisfaction of outstanding tax assessments against the individual. Unlike this case, the fugitive did not seek to invoke the processes of this Court.